


Action

MEMORANDUM

July 7, 2006

TO: County Council 
FROM: Sonya E. Healy, Legislative Analyst
SUBJECT: Action: Bill 15-06, Offenses - Loitering

On April 18, 2006, the Council President, at the request of the County Executive, introduced Bill 15-06, Offenses - Loitering. The Council held a public hearing on Bill 15-06 on June 13, 2006 and testimony was provided by the ACLU (© 9-11). At the public hearing, Councilmember Subin expressed concern about treating loitering as a criminal offense. **The Public Safety Committee reviewed Bill 15-06 on June 19, 2006, and (2-0) recommended approval with amendments.**

Public Safety Committee Recommendation

As introduced, Bill 15-06 does not regulate all loitering, it only regulates loitering that interferes, impedes, or hinders the free passage of pedestrian or vehicle traffic or that incites by words or other conduct imminent unlawful conduct. **In response to issues raised by the ACLU, the Committee recommended removing all references to the term "loitering" and instead recommended using "disturbing the public peace or disorderly conduct" to describe prohibited activities.** The Committee stated that since loitering, in and of itself, is not a criminal offense, this reference should be eliminated to remove potential confusion for the public.

At the request of the County Attorney's Office, the Committee also added "violating a condition of parole or probation" as a reason for temporary detention (line 70 © 4). This change is consistent with the Nevada "stop and identify" statute, which was upheld by the Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004).

In addition, the Committee recommended replacing "orderly" with "lawful" to describe picketing (line 86, © 5). If the behavior associated with picketing is unlawful it can be stopped and prosecuted. The Committee also made technical amendments to Bill 15-06 (© 1-5).

Background

Bill 15-06, drafted by the County Attorney's Office, amends the County's existing loitering law to more narrowly define the circumstances under which (1) a police officer may require an individual to produce identification and (2) an individual can be charged with disturbing the public peace. Both changes are needed to assure compliance with constitutional requirements.

Loitering, vagrancy, and disorderly conduct statutes have been challenged in numerous jurisdictions and many have been found to be overbroad or unconstitutionally vague. Statutes may be invalidated if they implicate First Amendment rights of freedom of speech or assembly; however, this does not mean that counties may never enact legislation that may impinge to some extent on the exercise of First Amendment rights. For example, counties are "free to prevent people from blocking sidewalks, obstructing traffic, littering streets, committing assaults, or engaging in countless other forms of antisocial conduct." *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).

Loitering as a Criminal Violation

Loitering has long been recognized as a criminal violation. Many statutes are based on the text proposed in the Model Penal Code. According to the Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada*, "statutes are based on the text proposed by the American Law Institute as part of the Institute's Model Penal Code. See *ALI, Model Penal Code*, § 250.6, *Comment 4*, pp. 392—393 (1980). The provision, originally designated in § 250.12, provides that a person who is loitering 'under circumstances which justify suspicion that he may be engaged or about to engage in crime commits a violation if he refuses the request of a peace officer that he identify himself and give a reasonably credible account of the lawfulness of his conduct and purposes.'" *Id.* § 250.12 (1961). In some states, a suspect's refusal to identify himself is a misdemeanor offense or civil violation; in others, it is a factor to be considered in whether the suspect has violated loitering laws. In other states, a suspect may decline to identify himself without penalty." *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004).

Some jurisdictions, including Maryland, do not have loitering statutes. Maryland has criminal sanctions for disturbing the peace and disorderly conduct (Maryland Code, Criminal Law § 10-201, © 12-13); trespass (*Id.* § 6-402 & 6-403, © 14-15); and refusal or failure to leave a public building or grounds (*Id.* § 6-409, © 16).

Under County law the difference between criminal and civil sanctions for a Class B violation is as follows: a \$200 fine and up to 30 days in jail for a criminal violation, and \$100 for a first offense and \$150 for a subsequent offense for a civil violation. Chief King from the Police Department told the Committee that it is important for the statute to remain a criminal violation because there are instances where individuals clearly provide police officers with incorrect names (i.e. Santa Clause), and the threat of criminal sanctions can often persuade an individual to provide accurate information. In addition, the State's Attorney can choose to

prosecute a violation as either a criminal or civil offense depending on the facts of a particular case. **In light of the other Committee recommendations, the Committee recommended maintaining the statute as a criminal violation.**

This packet contains:

	<u>Circle #</u>
Bill 15-06	1
Legislative Request Report	6
Memo from County Executive	7
Fiscal Impact Statement	8
Testimony from ACLU	9
Maryland Code Sections	12

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Bill No. 15-06
Concerning: Offenses – **[[Loitering]]**
Disturbing the public peace or
disorderly conduct
Revised: 6-19-06 Draft No. 4
Introduced: April 18, 2006
Expires: October 18, 2007
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) prohibit **[[certain types of loitering]]** disturbing the peace or disorderly conduct;
- (2) require certain persons to provide a law enforcement officer with the person's name;
- (3) prohibit certain activity at certain public places;
- (4) impose certain penalties; and
- (5) generally amend the County loitering law.

By amending

Montgomery County Code
Chapter 32, Offenses – Victim Advocate
Sections 32-13 through 32-17

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 32-13 through 32-17 are amended as follows:**

2 **32-13. [[Loitering]] Disturbing the public peace or disorderly conduct -**
3 **Definitions.**

4 [For the purposes of sections] As used in Sections 32-14 ~~[[to]]~~ through 32-17,

5 the following terms [shall] have the following meanings [respectively ascribed to

6 them in this section]:

7 **[[Loiter:** To circulate, stand around or remain or to park, or remain parked in

8 a motor vehicle, either as an individual or as a member of a group, at a public place

9 or place open to the public and to engage in any conduct prohibited under this law.

10 Loiter also means to collect, gather, congregate or to be a member of a group or a

11 crowd of people who are gathered together in any public place or place open to the

12 public and to engage in any conduct prohibited under this law.]]

13 ***Place open to the public:*** Any place [open to the public or any place to] ~~[[in~~

14 which]] where the public is invited or permitted [and in, on or around any privately

15 owned place of business, private parking lot or private institution, including places of

16 worship, cemetery or any place of amusement and entertainment whether or not a

17 charge of admission or entry thereto is made. It includes the elevator, lobby, halls,

18 corridors and areas open to the public of any store, office or apartment building.],

19 including:

20 (a) a place of business;

21 (b) a parking lot;

22 (c) a place of worship;

23 (d) a cemetery;

24 (e) a place of amusement ~~[[, whether or not admission is charged; and]]~~; or

25 (f) an elevator, lobby, or hallway ~~[[in a building where the public is~~

26 permitted]].

27 ***Public place:*** [Any public street, road, or highway, alley, lane, sidewalk,

crosswalk or other public way, or any public resort, place of amusement, park, playground, public building or grounds appurtenant thereto, school building or school grounds, public parking lot or any vacant lot.]

(a) Any public way, including

(1) a street, road, or highway;

(2) a sidewalk;

(3) an alley or lane; [[and]] or

(4) a crosswalk.

(b) Any public facility, including

(1) a park;

(2) a playground;

(3) a school; [[and]] or

(4) a government building.

(c) Any vacant lot or parcel of land.

32-14. [Same] [[Loitering]] Disturbing the public peace or disorderly conduct- Prohibited conduct.

[(a) It shall be unlawful for any person to] An individual must not [[loiter]]
at, on, or in a **public place or place open to the public** [[in such manner a way that]]:

[(1)] (a) [To interfere, impede or hinder] interfere[[s]] with or hinder[[s]] the free passage of pedestrian or vehicular traffic[.]; or

[(2)] To interfere with, obstruct, harass, curse or threaten or to do physical harm to another member or members of the public.

(3) That] (b) incite[[s]] unlawful conduct, by words or intentional conduct, [it is clear that there is a reasonable likelihood a breach of the peace or disorderly conduct shall result] which is likely to produce [[any]] imminent unlawful conduct.

55 [(b) It shall be unlawful for any person to loiter at a public place or place
56 open to the public and to fail to obey the direction of a uniformed police
57 officer or the direction of a properly identified police officer not in
58 uniform to move on, when not to obey such direction shall endanger
59 public peace.]

60 **32-15. [Same-Identification.] Temporary detention by police officer of an**
61 **[[person]] individual suspected of criminal behavior.**

62 [It shall be unlawful for any person at a public place or place open to the
63 public to refuse to identify himself by name and address at the request of a uniformed
64 police officer or of a properly identified police officer not in uniform, if the
65 surrounding circumstances are such as to indicate to a reasonable man that the public
66 safety requires such identification].

67 (a) A police officer may temporarily detain any individual under
68 circumstances that reasonably indicate that the individual [[either]]:

69 (1) has engaged in conduct prohibited under Section 32-14[. or];

70 (2) has violated or is violating a condition of parole or probation[.];

71 or

72 (3) has committed, is committing, or is about to commit a crime.

73 (b) A police officer may detain an individual under this Section only to
74 determine the individual's identity and the circumstances surrounding
75 [[the]] suspected criminal behavior. Any [[person so]] detained
76 individual must truthfully identify himself, but must not be compelled
77 to produce identification or answer any other question from any police
78 officer.

79 (c) An individual must not be detained under this Section longer than is
80 reasonably necessary to achieve the purposes of this Section[. and in
81 no case longer than 60 minutes]]. Unless the individual is arrested,

the detention must not last longer than 60 minutes or extend beyond
the place, or the immediate vicinity of the place, where the individual
was first detained.

32-16. [Same-] Lawful assembly exempted.

Nothing in this Article, except Section 32-23, prohibits ~~[[orderly]]~~ lawful
picketing or other lawful assembly.

**32-17. [Same] ~~[[Loitering]]~~ Disturbing the public peace or disorderly
conduct- Penalties; Warning.**

(a) [Any person violating any of the provisions herein shall be subject to
punishment for a class B violation as set forth in section 1-19 of chapter
1 of the County Code.] An individual who violates Section 32-14 or
Section 32-15 has committed a Class B violation.

(b) [No person shall] An individual must not be charged with a violation of
[sections 32-13 to 32-16] Section 32-14 or Section 32-15 unless [and
until] the arresting officer has first warned the individual of the violation
and [such person] the individual has failed or refused to stop [such] the
violation.

Approved:

George L. Leventhal, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 15-06

Offenses - Disturbing the public peace or disorderly conduct

DESCRIPTION: This bill amends the County's loitering law to more narrowly define the circumstances under which an individual may be required to produce identification and be cited for or charged with disturbing the public peace or disorderly conduct to ensure compliance with constitutional requirements.

PROBLEM: For many years, Section 32-15, which makes it unlawful to fail or refuse to identify oneself when requested by a police officer, has been viewed by judges of the County's circuit and district courts as unconstitutionally vague. There is also a concern that the loitering prohibition does not provide a person of ordinary intelligence adequate notice of what conduct is forbidden by the statute.

GOALS AND OBJECTIVES: To more narrowly define the circumstances under which an individual may be cited for or charged with disturbing the public peace or disorderly conduct. This in turn will adequately advise individuals and police officers alike of the circumstances under which an individual may be required to truthfully provide his or her name to a police officer.

COORDINATION: Department of Police

FISCAL IMPACT: None

ECONOMIC IMPACT: No fiscal impact.

SOURCE OF INFORMATION: Marc Hansen, Chief, Division of General Counsel, (240) 777-6740.
William A. Snoddy, Associate County Attorney, (240) 773-5004.

APPLICATION WITHIN

MUNICIPALITIES: Barnesville, Brookville, Chevy Chase Village, Chevy Chase View, Chevy Chase Section 3, Chevy Chase Section 5, Glen Echo, Martin's Additions, North Chevy Chase, Takoma Park

PENALTIES: Subject to Class "B" violation.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

March 21, 2006

TO: George L. Leventhal, President
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: County Loitering Law - Amendment

Following the Supreme Court's decision in *Hibel v. Sixth Judicial District*, which upheld a Nevada "stop and identify" statute, an examination of the County's loitering law indicates that it may not pass constitutional muster. More specifically, Section 32-15, which makes it unlawful to fail or refuse to identify oneself when requested by a police officer, has been viewed by judges of the County's circuit and district courts as unconstitutionally vague. The Office of the State's Attorney takes the same position. There is also a concern that the loitering prohibition does not provide a person of ordinary intelligence adequate notice of what conduct is forbidden by the statute.

I am now forwarding for Council action expedited legislation to amend Sections 32-13, 32-14, 32-15 and 32-17. The proposed amendments will modify the definitions of the terms "loitering", "public place" and "place open to the public." This legislation will also more narrowly define the circumstances under which an individual may be cited for or charged with loitering. This, in turn, will adequately advise individuals and police officers alike of the circumstances under which an individual may be required to truthfully provide his or her name to a police officer.

I look forward to working with the Council on this important matter.

DMD:tjs

Enclosure

cc: Bruce Romer, Chief Administrative Officer
J. Thomas Manger, Chief, Department of Police
Charles W. Thompson, Jr., County Attorney

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MONTGOMERY COUNTY
COUNCIL

7



OFFICE OF MANAGEMENT AND BUDGET

Douglas M. Duncan
County Executive

Beverley K. Swaim-Staley
Director

MEMORANDUM

May 9, 2006

022588

TO: George L. Leventhal, President
Montgomery County Council

VIA: Bruce Romer
Chief Administrative Officer

FROM: Beverley K. Swaim-Staley, Director
Office of Management and Budget

SUBJECT: Bill 15-06, Offenses - Loitering

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The bill amends the County's loitering law to more narrowly define the circumstances under which an individual may be required to produce identification and be cited for or charged with loitering to ensure compliance with constitutional requirements.

FISCAL SUMMARY

The legislation is not expected to have an additional fiscal impact on the County.

The following contributed to and concurred with this analysis: Nicholas Tucci, Department of Police, and Dana Brassell, MNCPPC.

BSS:brg

cc: Nicholas Tucci, Police
Dana Brassell, MNCPPC
Belinda Bunggay, OMB
Jennifer Bryant, OMB



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MONTGOMERY COUNTY
COUNCIL

Office of the Director

Testimony
Of
Robert Coe, Board Member
ACLU Chapter of Montgomery County
Before the Montgomery County Council
On
Bill 15-06, Loitering
June 13, 2006

On behalf of the ACLU Chapter of Montgomery County, I would like to share our reservations about Bill 15-06.

Personal autonomy, what Justice Brandeis famously called "the right to be let alone,"¹ is the foundation of our system of limited government. For our purposes today, that means that the individual has a constitutional right to "loiter," as defined by Bill 15-06, provided that he is not violating some other law. In lay terms, "just hanging out" is constitutionally protected activity. For this reason, proposals to criminalize loitering must be viewed with a certain skepticism and carefully scrutinized.

Loitering can appropriately be made the premise for a crime only when it interferes with the rights of others. Bill 15-06 is on solid ground in section 32-14(a) when loitering is coupled with "interfer[ing] with or hinder[ing] the free passage of pedestrian or vehicular traffic." That makes sense because as a

¹ *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

matter of fact loitering can interfere with the ability of others to pass on sidewalks or streets. But it can only be made a crime when it actually does interfere or hinder – the real crime is the interference or hindrance, not the loitering by itself. Indeed, it would be far better if the reference to loitering were removed from the bill. The offense should be interfering with or hindering the free passage of pedestrian or vehicular traffic -- an offense that can be committed by someone who is loitering, or by someone who has never loitered.

On the other hand, there is no connection at all between loitering and incitement to unlawful conduct, criminalized in section 32-14(b). Indeed, the active nature of incitement seems quite contradictory to the passive nature of loitering.

There is a large body of law as to when incitement to unlawful conduct may be criminalized based on the Supreme Court's 1969 decision in *Brandenburg v. Ohio*.² The Court held that the state may not "forbid or proscribe advocacy of the use of force or law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."³ Section 32-14(b) requires only that the unlawful conduct "incites by word or conduct any imminent unlawful conduct," and omits two elements required by *Brandenburg*: that the conduct be intentional and that it is likely to produce the intended unlawful conduct. ✓

While Section 32-14(b) could perhaps be repaired by adding these missing elements, there is no reason to do so. *As a matter of fact*, there is no

² *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

³ *Brandenburg*, 395 U.S. at 447.

connection between loitering and incitement to unlawful conduct. Loitering adds nothing to an unlawful incitement. An incitement is lawful or not without reference to whether the accused was loitering.

We urge the Council to delete section 32-14(b), since there is no reason for it.

As for the offense of disorderly conduct or breach of the peace in the current version of section 32-14, that offense is already more than adequately covered by the Maryland Criminal Code section 10-201(c). Once again, it is irrelevant whether a person was or was not loitering before he engaged in the conduct that constitutes disorderly conduct or breach of the peace

And finally, we have a comment concerning section 32-16: "Nothing in this Article, except Section 32-23, prohibits orderly picketing or other lawful assembly." We suggest the deletion of the word "orderly." If picketing is otherwise unlawful, e.g., it prevents the passage of others on a sidewalk, it can be enjoined or prosecuted. The statute should not suggest to a judge that she may apply her own notions of "orderliness" to determine if picketing is lawful.

Thank you for your consideration of our views. I would be pleased to answer your questions.

(b) *Suspension of fine.* — If a defendant is found guilty of a violation under this part and a fine is imposed, a court may direct that the payment of the fine be suspended or deferred under conditions determined by the court.

(c) *Failure to pay.* — A defendant's willful failure to pay a fine imposed under this part may be treated as a criminal contempt punishable as provided by law.

(d) *Appeal.* — A defendant who is found guilty of a violation under this part, as provided by law for a criminal case, may file:

- (1) an appeal;
- (2) a motion for a new trial; or
- (3) a motion for a revision of a judgment.

(e) *Authority of State's Attorney.* — The State's Attorney for each county may:

- (1) prosecute a violation under this part in the same manner as a prosecution of a criminal case, including entering a nolle prosequi or placing the case on violation on a stet docket; and
- (2) exercise authority in the same manner prescribed by law for a violation of the criminal laws of the State. (2002, chs. 108, 109.)

SPECIAL REVISOR'S NOTE

Chapters 108 and 109 each added this section as § 10-117 under a new part "Part II. Alcoholic Beverage Consumption or Possession of Open Container in Passenger Area of Motor Vehicle". However, Ch. 213, § 1, Acts of 2002, transferred Article 2B, §§ 22-101 through 22-

108, as enacted by Ch. 26, § 4, Acts of 2002, to be §§ 10-113 through 10-120, under the new part "Part II. Alcoholic Beverages Violations". Precedence in numbering has been given to Ch. 213 as the later enactment. See Art. 1, § 17. Accordingly, this section appears as § 10-127.

Editor's note. — See Editor's note under § 10-123 of this article.

Subtitle 2. Disturbing the Peace, Disorderly Conduct, and Related Crimes.

§ 10-201. Disturbing the public peace and disorderly conduct.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) (i) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation.

(ii) "Public conveyance" includes an airplane, vessel, bus, railway car, school vehicle, and subway car.

(3) (i) "Public place" means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose.

(ii) "Public place" includes:

1. a restaurant, shop, shopping center, store, tavern, or other place of business;
2. a public building;
3. a public parking lot;

4. a public street, sidewalk, or right-of-way;
5. a public park or other public grounds;
6. the common areas of a building containing four or more separate dwelling units, including a corridor, elevator, lobby, and stairwell;
7. a hotel or motel;
8. a place used for public resort or amusement, including an amusement park, golf course, race track, sports arena, swimming pool, and theater;
9. an institution of elementary, secondary, or higher education;
10. a place of public worship;
11. a place or building used for entering or exiting a public conveyance, including an airport terminal, bus station, dock, railway station, subway station, and wharf; and
12. the parking areas, sidewalks, and other grounds and structures that are part of a public place.

(b) *Construction of section.* — For purposes of a prosecution under this section, a public conveyance or a public place need not be devoted solely to public use.

(c) *Prohibited.* — (1) A person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance.

(2) A person may not willfully act in a disorderly manner that disturbs the public peace.

(3) A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.

(4) A person who enters the land or premises of another, whether an owner or lessee, or a beach adjacent to residential riparian property, may not willfully:

- (i) disturb the peace of persons on the land, premises, or beach by making an unreasonably loud noise; or
- (ii) act in a disorderly manner.

(5) A person from any location may not, by making an unreasonably loud noise, willfully disturb the peace of another:

- (i) on the other's land or premises;
- (ii) in a public place; or
- (iii) on a public conveyance.

(6) In Worcester County, a person may not build a bonfire or allow a bonfire to burn on a beach or other property between 1 a.m. and 5 a.m.

(d) *Penalty.* — A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 60 days or a fine not exceeding \$500 or both. (An. Code 1957, art. 27, § 121; 2002, ch. 26, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 121.

Subsection (b) of this section is revised as a construction provision for clarity.

In subsection (a)(2)(i) and (3)(i) of this section, the former references to the "general" public are deleted as unnecessary.

In subsection (a)(2)(ii) of this section, the

former reference included in the co "vessel".

Also in subsection former reference light of the co "school vehicle".

In subsection (

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For note, "Constitutional Freedom of: 'Loud and Unseemly Regulation' Balt. L. Rev. 507

Constitutional
prior similar ver makes it unlawful to disturb any neighbor town or county by constitutional wh the volume level First Amendment tution. Eanes v. 604 (1990), cert. d 3218, 110 L. Ed. 1

This section is c lored to serve a s does not inhibit t channels of comm Md. 436, 569 A.2d U.S. 938, 110 S. (1990).

Language pr
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And they do
pression. In re 289 A.2d 846, cer

The statutes p cannot apply to offensive, that is Fourteenth Amer Md. App. 252, 28 Md. 741 (1972).

Whether the "l "an unreasonably the statutes are expression depen of them, a quest facts of the partic Md. App. 252, 28 Md. 741 (1972).

Construction.
proscribed two ge about any public disorderly mann public peace may one indecently e prohibited, or by

(c) *Vehicle*. — "Vehicle" has the meaning stated in § 11-176 of the Transportation Article.

REVISOR'S NOTE

This subsection is new language derived without substantive change from former Art. 27, § 576(c)(1)(i).

Because the term "off-road vehicle" as formerly defined applied to on-road as well as

off-road vehicles, contrary to standard usage, the revision of this subtitle uses the newly defined term "vehicle" as well as the redefined term "off-road vehicle" in instances where the former defined term "off-road vehicle" was used.

(d) *Wanton*. — "Wanton" retains its judicially determined meaning.

REVISOR'S NOTE

This subsection formerly was Art. 27, § 576(d). No changes are made.

(An. Code 1957, art. 27, § 576(a), (c)(1), (d); 2002, ch. 26, § 2.)

Arrest in violation of Fourteenth Amendment. — An arrest under former section 577, article 27, by an amusement park's special policeman, acting under color of his dual authority as a deputy sheriff, is State

action in enforcing segregation in violation of the Fourteenth Amendment. *Griffin v. Maryland*, 378 U.S. 130, 84 S. Ct. 1770, 12 L. Ed. 2d 754 (1964).

§ 6-402. Trespass on posted property.

(a) *Prohibited*. — A person may not enter or trespass on property that is posted conspicuously against trespass by:

- (1) signs placed where they reasonably may be seen; or
- (2) paint marks that:

(i) conform with regulations that the Department of Natural Resources adopts under § 5-209 of the Natural Resources Article; and

(ii) are made on trees or posts that are located:

1. at each road entrance to the property; and
2. adjacent to public roadways, public waterways, and other land adjoining the property.

(b) *Penalty*. — A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both. (An. Code 1957, art. 27, § 577(a)(1), (b); 2002, ch. 26, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 577(a)(1) and (b).

In the introductory language of subsection (a) of this section, the reference to property being posted against "trespass" is substituted for the former reference to property being posted against "trespassers" for clarity and consistency within this subtitle.

In subsection (a)(1) of this section, the phrase "signs placed where they reasonably may be seen" is substituted for the former phrase "[s]igns where they may reasonably be seen" to clarify that the requirement that signs be posted conspicuously applies to the location as well as the content of the signs.

In subsection (a)(2)(i), the reference to regulations that the Department of Natural Re-

§ 6-403

ANNOTATED CODE OF MARYLAND

sources adopts "under § 5-209 of the Natural Resources Article" is added for clarity.

For the statutory requirement that the Department of Natural Resources adopt regulations that prescribe the type and color of paint to be used for posting private property under

the provisions of this section, see NP § 5-209(e). As to the content of the regulations, see COMAR 08.01.05.01.

Defined term:
"Person"

§ 1-101

Maryland Law Review. — For note discussing whether public works projects should anchor the navigation servitude, see 41 Md. L. Rev. 156 (1981).

University of Baltimore Law Review. — For note, "The 1977 Maryland Wiretapping and Electronic Surveillance Act," see 7 U. Balt. L. Rev. 374 (1978).

§ 6-403. Wanton trespass on private property.

(a) *Prohibited — Entering and crossing property.* — A person may not enter or cross over private property or board the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership.

(b) *Same — Remaining on property.* — A person may not remain on private property including the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so.

(c) *Penalty.* — A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding \$500 or both.

(d) *Construction of section.* — This section prohibits only wanton entry on private property.

(e) *Applicability to housing projects.* — This section also applies to property that is used as a housing project and operated by a housing authority or State public body, as those terms are defined in Article 44A of the Code, if an authorized agent of the housing authority or State public body gives the required notice specified in subsection (a) or (b) of this section. (An. Code 1957, art. 27, § 577(a)(2), (b); 2002, ch. 26, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 577(a)(2) and (b).

In subsection (a) of this section, the former references to "land" and "premises" are deleted as included in the reference to "private property".

* Also in subsection (a) of this section, the former reference to being "duly" notified is deleted as surplusage.

In subsection (d) of this section, the reference to entry "on private property" is added for clarity and consistency with subsection (a) of this section. Correspondingly, the reference to "private property" is substituted for the former reference to "land".

In subsection (e) of this section, the former reference to a "duly" authorized agent is deleted as implicit in the reference to an "authorized agent".

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that subsection (d) of this section appears to prohibit only "wanton" entry onto private property, but not "wanton[ly]" remaining on private property after being notified not to do so.

Defined terms:
"Person"
"Wanton"

§ 1-101
§ 6-401

Maryland Law Review. — For note discussing whether public works projects should anchor the navigation servitude, see 41 Md. L. Rev. 156 (1981).

University of Baltimore Law Review. — For note, "The 1977 Maryland Wiretapping and Electronic Surveillance Act," see 7 U. Balt. L. Rev. 374 (1978).

"Wanton". — Wanton by extreme recklessness the rights of others." 422, 171 A.2d 717 grounds, 378 U.S. 130 2d 754 (1964).

The criminal trespass that the putative trespasser stands in mark trespass. In re Jaso 456, 733 A.2d 351 (1

Construction with accommodations law (see now this section) and both be executed repugnant and in ir State, 236 Md. 356.

Notification. — a notification to state occasion does not occasions in the buildings and grow

§ 6-404. Us

(a) *Scope of*

(1) a vessel

(2) a military

(3) a farm

purposes, or c moving;

(4) earth-

(5) a law

being used for

(b) *Prohibited*

driveway, a p

unless the pe

owner or ten

(c) *Penalty*

and on conviction

exceeding \$5

2002, ch. 26

This section substantive c §§ 576(c)(2) a

University of Baltimore Law Review. — Electronic Surveillance Act," see 7 U. Balt. L. Rev. 374 (1978).
For note, "The 1977 Maryland Wiretapping and

§ 6-409. Refusal or failure to leave public building or grounds.

(a) *Prohibited — During regularly closed hours.* — A person may not refuse or fail to leave a public building or grounds, or a specific part of a public building or grounds, during the time when the public building or grounds, or specific part of the public building or grounds, is regularly closed to the public if:

(1) the surrounding circumstances would indicate to a reasonable person that the person who refuses or fails to leave has no apparent lawful business to pursue at the public building or grounds; and

(2) a regularly employed guard, watchman, or other authorized employee of the government unit that owns, operates, or maintains the public building or grounds asks the person to leave.

(b) *Same — During regular business hours.* — A person may not refuse or fail to leave a public building or grounds, or a specific part of a public building or grounds, during regular business hours if:

(1) the surrounding circumstances would indicate to a reasonable person that the person who refuses or fails to leave:

(i) has no apparent lawful business to pursue at the public building or grounds; or

(ii) is acting in a manner disruptive of and disturbing to the conduct of normal business by the government unit that owns, operates, or maintains the public building or grounds; and

(2) an authorized employee of the government unit asks the person to leave.

(c) *Penalty.* — A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding \$1,000 or both. (An. Code 1957, art. 27, § 578(a), (b), (d); 2002, ch. 26, § 2.)

REVISOR'S NOTE

This section is new language derived without substantive change from former Art. 27, § 578(a), (b), and (d).

In the introductory language of subsection (a) of this section, the reference to "the time" is substituted for the former reference to "those hours of the day or night" for brevity.

In subsection (a)(1) and the introductory language of subsection (b)(1) of this section, the references to the person "who refuses or fails to leave" are added for clarity.

In subsections (a)(2) and (b)(1)(ii) and (2) of this section, the phrase "government unit" is

substituted for the former phrase "public agency or institution" for consistency within this article. See General Revisor's Note to article.

In subsection (b)(1)(ii) of this section, the reference to "grounds" is substituted for the former reference to "property" for consistency within this section.

Defined term:
"Person"

§ 1-101